IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.413 of 2002

DATE OF DECISION: MARCH 8, 2007

Lakhwinder Kaur and another

...PETITIONERS

VERSUS

Gurmail Singh

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.Naveen Batra, Advocate,
for the petitioners.
None for the respondent.

...

Smt.Lakhwinder Kaur and her minor daughter have filed this criminal revision for setting aside the judgment dated 11.8.2001 passed by the Additional Sessions Judge, Amritsar, whereby in revision, the order dated 15.9.2000 passed by the Sub Divisional Judicial Magistrate, Patti, awarding the maintenance of Rs.500/-p.m. and Rs.300/-p.m. to the petitioners, respectively, under Section 125 of the Code of Criminal Procedure (hereinafter referred to as `the Code'), has been set aside on the ground that petitioner No.1 has failed to prove her marriage with the respondent husband.

2. In this case, on 21.10.2000, the petitioners filed an application under Section 125 of the Code against the respondent on the allegation that petitioner No.1 was married to the respondent about seven years back at village Sur Singh according to Sikh rites and out of the said wedlock,

petitioner No.2 was born. It was further pleaded that since the date of marriage, the behaviour of the respondent towards petitioner No.1 was not cordial and he used to harass and taunt her for bringing inadequate dowry. About a year back, she along with her daughter was turned out from the matrimonial home by the respondent. It was alleged that in spite of the efforts made by the parents and other family members of petitioner No.1, she was not rehabilitated by the respondent. Claiming that the petitioners are unable to maintain themselves and are living at the mercy of the parents of petitioner No.1, the aforesaid application was filed with the allegation that the respondent, who is working as a Baildar, is having income of more than Rs.15,000/- per month. In spite of that, he has neglected and refused to maintain the petitioners.

3. The respondent in his reply denied the factum of marriage with petitioner No.1. He also denied that a daughter was born out of the wedlock of petitioner No.1. Rather, it was alleged that he was married with Simmi and a son was born from the said wedlock. Thereafter, Simmi died and after her death, it is alleged that the respondent performed marriage with one Sushma daughter of Banta Ram in the year 1995. Due to some differences between the respondent and said Sushma, she lived separately from him w.e.f. 30.12.1995.

4. In support of her application, petitioner No.1 examined herself as PW1 and also got examined three witnesses. On the contrary, the respondent examined himself as RW3 and also got examined five witnesses. While appearing as PW1- petitioner No.1 stated that she was married with the respondent Gurmail Singh according to Sikh rites and lawans were performed before Sri Guru Granth Sahib. She further stated that lawans

were performed by PW2-Kundan Singh, Granthi, since dead. She also stated that out of this wedlock, petitioner No.2 was born. PW3-Gurmej Kaur is the mother of petitioner No.1. PW4-Gurmej Singh is the son of Amar Singh and a resident of village Valtoha.

5. On the other hand, the respondent examined RW1-Gopal Singh, who stated that respondent Gurmail Singh was married to one Simmi in the year 1990, who gave birth to a son and thereafter, she died. He further stated that thereafter Gurmail Singh married Sushma, who was subsequently divorced. He also denied the factum of marriage of Gurmail Singh with Lakhwinder Kaur. RW2-Rasal Masih stated that respondent Gurmail Singh was married to one Sushma on 2.7.1995 and they were residing separately since 30.12.1995. The respondent himself stepped into the witness box as RW3 and reiterated the allegations of the written statement. RW4-Kala, RW5-John Dina Nath and RW6-Vir Singh corroborated the statement of respondent Gurmail Singh.

6. The trial Court after considering the evidence led by the parties, allowed the application filed by the petitioners while holding that the marriage between petitioner No.1 and the respondent has been fully proved and, thus, awarded maintenance of Rs.500/- p.m. and Rs.300/-p.m. to the petitioners, respectively, while observing as under:-

> "In the instant case, the applicant as well as the other witnesses have fully proved the marriage with the respondent and applicant also deposed that to treat the respondent as her husband the respondent used to treat her as his wife. Similarly, Sandip, who is daughter of Gurmail Singh also used to treat Gurmail Singh as her father and Gurmail Singh respondent

used to treat her as his daughter. As such, marriage is proved by the applicant with the respondent. on the other hand the respondent has failed to produce any voter list, ration card of Sushma. Even, the death certificate of Sammi who is alleged wife of respondent has not been produced by the respondent. Hence, I find that the applicant Lakhwinder Kaur is wife of respondent and applicant No.2 is daughter of respondent and the petitioners have been neglected by the respondent and there is no dispute regarding the income of respondent. The respondent himself admitted that he is working as Baildar in Zila Parishad and earning Rs.3,000/- per month whereas RW1 has deposited in his cross examination that respondent is working as Baildar and drawing Rs.8,000/- or Rs.10,000/- per month. In my opinion, the respondent has sufficient means to maintain the petitioners but the petitioners are neglected by the respondent. Therefore, the petitioners are entitled for maintenance from the respondent. As such, the application is accepted and respondent is directed to pay Rs.500/- per month to petitioner No.1 and Rs.300/- per month to petitioner No.2 as maintenance with effect from filing the application."

7. On revision filed by the husband, the order of the Sub Divisional Judicial Magistrate was set aside by the revisional Court while reversing the finding about the factum of marriage between petitioner No.1 and the respondent. Hence, this revision petition.

8. I have heard the counsel for the petitioners and gone through the record of the case.

9. Learned counsel for the petitioners submitted that the finding of the revisional Court to the effect that petitioner No.1 has failed to prove that she is legally wedded wife of Gurmail Singh is not only contrary to the evidence on the record but the same is also based on surmises and conjectures. Learned counsel submits that while ignoring the statement of petitioner No.1 and her other witnesses, the revisional Court proceeded on conjectures while observing that respectable persons of village Sur Singh, where the marriage of petitioner No.1 with the respondent had allegedly taken place, could have been examined to show that there was ever a granthi of the name of Kundan Singh, who performed the ceremonies of the said marriage. In absence of such evidence, adverse inference was drawn as the said granthi was not produced in the court. Learned counsel further submits that adverse inference was also drawn for not producing the school certificate or the birth certificate of petitioner No.2-Sandip. The non-production of ration card and voters list have also been taken as adverse factors. Learned counsel submits that the validity of the marriage for the purpose of summary proceeding under Section 125 of the Code is to be determined on the basis of evidence brought on record by the parties. The standard of proof in such proceeding is not as strict as required in criminal cases. It has been clearly proved on record that petitioner No.1 and the respondent lived together as husband and wife and a child was also born from the said wedlock. He further submits that even the stand taken by the respondent has not been established, therefore, in such situation, the revisional Court has acted illegally and arbitrarily while setting aside the order passed by the trial Court merely on the basis of surmises and conjectures.

10. Counsel for the petitioners while referring to the judgment and decree dated 12.10.2001 passed in Civil Suit No.27 of 1999 filed by the respondent for a declaration that petitioner No.1 is not legally wedded wife and petitioner No.2 is not the daughter of the respondent, submitted that the said suit was dismissed by the Civil Court while holding that the evidence adduced by the respondent is not sufficient to prove that petitioner No.1 is not his legally wedded wife and petitioner No.2 is not his legitimate daughter. It was further held that the respondent has to prove his own case by leading cogent and reliable evidence. It has been further submitted that the said judgment between the parties, which has become final, is binding on the parties. A certified copy of the judgment and decree has been annexed with this petition. In view of the said finding, the impugned order passed by the revisional Court is liable to be set aside.

11. After hearing the counsel for the petitioners and going through the record of the case, the impugned order passed by the revisional Court is not sustainable. A perusal of the order of the trial court discloses that the said court on analysis of the evidence on the record, had arrived at a clear finding that petitioner No.1 has proved her marriage with the respondent and she was residing with the respondent as his wife. The judgment of the trial Court further discloses that the plea taken by the respondent that he was married with Simmi and a son was born from the said wedlock and after the death of Simmi, the respondent performed marriage with one Sushma daughter of Banta Ram in the year 1995, was not proved. The trial Court while taking into consideration the statement of petitioner No.1 and other witnesses produced by her, came to the conclusion that petitioner No.1 was married with the respondent according to Sikh rites and petitioner No.2 was

born from the said wedlock. The revisional Court has set aside the said finding of the trial Court only on the basis of surmises and conjectures while proceeding on the assumption that petitioner No.1 was required to strictly prove the alleged marriage with the respondent. The revisional Court has drawn wrong adverse inference for not producing some respectable persons of village Sur Singh where the marriage of petitioner No.1 with the respondent had allegedly taken place. A wrong inference has also been drawn while observing that respectable persons of village Sur Singh, where the marriage of petitioner No.1 with the respondent had allegedly taken place, could have been examined to show that there was ever a granthi of the name of Kundan Singh, who performed the ceremonies of the said marriage. Similarly, wrong inference was drawn for not producing the birth and school certificates of petitioner No.2. In my opinion, the revisional Court has drawn the aforesaid adverse inference without any justification or reason, and set aside the well reasoned finding of the trial Court while completely ignoring that the proceeding under Section 125 of the Code is of summary nature and in these proceedings the standard of strict proof of a fact as required in a criminal case is not required. In Dwarika Prasad Satpathy v. Bidyut Prava Dixit & Anr., 1999(3) CCC 394 (SC), it was held that validity of the marriage for the purpose of summary proceeding under Section 125 of the Code is to be determined on the basis of evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouse, and in

such a situation, the party who denies the marital status has to rebut the presumption. In this case, the evidence led by the respondent was not found to be sufficient by the trial Court to rebut the said presumption. Therefore, in my opinion, the revisional Court was not justified in reversing the finding of the trial Court on the factum of marriage between petitioner No.1 and the respondent.

12. In addition to the above, it is to be remembered that the order passed in an application under Section 125 of the Code does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the respondent filed a civil suit for declaration that petitioner No.1 is not legally wedded wife and petitioner No.2 is not the daughter of the respondent. The said suit was dismissed by the Civil Court while holding that the evidence adduced by the respondent is not sufficient to prove that petitioner No.1 is not his legally wedded wife and petitioner No.2 is not his legitimate daughter. The suit was dismissed after the judgment passed by the revisional Court. Thus, in view of the said finding given by the Civil Court, which is not only binding on the parties but also binding on the criminal court, the impugned order is also liable to be set aside.

13. In view of the aforesaid discussion, the criminal revision is allowed and the judgment dated 11.8.2001 passed by the Additional Sessions Judge, Amritsar is set aside.

March 8, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE